



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEVON MILLINGTON, :
Petitioner, :
: 11 Civ. 499 (LGS)(DCF)
-against- :
: OPINION AND ORDER
WILLIAM LEE, :
Respondent. :
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LORNA G. SCHOFIELD, District Judge:

Petitioner Devon Millington brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his conviction for murder in the first degree (the “Petition”). This case was referred to the Honorable Debra Freeman for a report and recommendation (the “Report”). The Report was filed on August 14, 2014, and recommends that the writ be granted on Petitioner’s claim of ineffective assistance of counsel because his counsel misinformed him about the maximum possible sentence after trial. In particular, the Report recommends that the prosecution be directed to re-extend its plea offer to Petitioner and, assuming Petitioner accepts the plea offer, present it to the trial court.

On August 28, 2014, Respondent filed a letter under seal explaining that the prosecution had agreed to re-extend plea offer to Petitioner as recommended in the Report. Respondent requested, with Petitioner's consent, that further action on the writ be stayed pending the outcome of re-extending the plea offer. Respondent explained that he would withdraw his objections to the Report, filed on the same day as the letter, if Petitioner successfully repledaded in state court.

By letter from Petitioner dated March 3, 2015, the parties informed the Court that Petitioner had successfully repled as recommended in the Report. Respondent withdrew his objections and the parties consented to the Court “affirming Judge Freeman’s Report and

Recommendation.”

A reviewing court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The district court “may adopt those portions of the report to which no ‘specific, written objection’ is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.” *Adams v. N.Y. State Dep’t of Educ.*, 855 F. Supp. 2d 205, 206 (S.D.N.Y. 2012) (citing Fed. R. Civ. P. 72(b), *Thomas v. Arn*, 474 U.S. 140, 149 (1985)).

The factual and legal bases underlying the well-considered Report are neither clearly erroneous nor contrary to law. Accordingly, the Report is ADOPTED in its entirety. The Petition is GRANTED in part and DISMISSED in part.

As to Petitioner’s ineffective assistance of counsel claim, Petitioner has met the standards for relief set forth in 28 U.S.C. § 2254 (d)(1) and (2). He was denied his Sixth Amendment right to effective assistance of counsel, and is thus entitled to a writ of habeas corpus, pursuant to 28 U.S.C. § 2254(a). Therefore, a writ of habeas corpus is GRANTED as further described in the Report. The parties agree that this writ has been satisfied. Petitioner’s remaining claims are DISMISSED.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: March 26, 2015
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE